

**STATE OF ARKANSAS
DEPARTMENT OF FINANCE & ADMINISTRATION
OFFICE OF HEARINGS & APPEALS**

ADMINISTRATIVE DECISION

IN THE MATTER OF [REDACTED]
[REDACTED]
(ACCOUNT ID.: [REDACTED])

**GROSS RECEIPTS TAX
ASSESSMENT
LETTER ID: [REDACTED]**

DOCKET NO.: 21-238

ASSESSED AMOUNT: [REDACTED]¹

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest received December 28, 2020, signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on February 26, 2021, at 1:00 p.m. in Little Rock, Arkansas. The Department was represented by Dan Parker, Attorney at Law – Office of Revenue Legal Counsel (“Department’s Representative”). Present on behalf of the Department was Ebony Morgan, Fiscal Support Analyst. The Department’s Representative and the Fiscal Support Analyst appeared at the hearing by telephone. The Taxpayer appeared at the hearing by telephone and represented herself.

ISSUE

Whether the Department’s assessment should be sustained. Yes.

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

Prehearing Filings

¹ This amount represents [REDACTED] (tax), [REDACTED] (late payment penalty), and [REDACTED] (interest).

Within his Answers to Information Request, the Department's Representative provided a statement of relevant facts and her analysis, stating as follows, in pertinent part²:

On or about January 12, 2018, [REDACTED] ("Taxpayer") purchased a [REDACTED] ["Relevant Vehicle"] from [REDACTED] (the "Dealer"). The Motor Vehicle Retail Installment Sales Contract (the "Sales Contract") reflects a total sales price [REDACTED], which includes a vehicle price of [REDACTED], a Service Contract of [REDACTED], and a Service and Handling Fee of [REDACTED]. See Sales Contract, **Exhibit 1**.³

The Department determined that Taxpayer had not registered the Vehicle and on or about October 5, 2020, mailed to Taxpayer a Billing Statement (**Exhibit 2**), Explanation of Tax Adjustment (**Exhibit 3**)⁴, and Notice of Proposed Assessment (**Exhibit 4**) for [REDACTED], consisting of sales tax of [REDACTED], interest in the amount of [REDACTED], and a penalty in the amount of [REDACTED]. On June 13, 2018, the Dealer repossessed the Vehicle. See **Exhibit 5**.

The Taxpayer filed a timely protest and has requested a hearing by telephone. See Protest, **Exhibit 6**. The Taxpayers' Protest contains the following reasons for disagreeing with the proposed assessment:

"I disagree with the proposed assessment because the car I had assessed had been reposed before I could pay the taxes on it and [REDACTED] took it back and I do not feel that I am responsible for the following payment because I do not own or have the car."

Within his Answers to Information Request, the Department's Representative argued that a sale of a motor vehicle in excess of \$4,000.00 is taxable at the time of the vehicle transfer regardless of whether the motor vehicle is later returned to the seller after a brief period of time. He further asserted that the assessment of interest and the late payment penalty were appropriate under Ark. Code Ann. §§ 26-18-508 (Repl. 2020) and 26-52-510(a)(4) (Repl. 2020), respectively.

² All exhibits support the statements for which they are cited.

³ This document states that the Taxpayer remitted [REDACTED] towards this purchase.

⁴ This Exhibit states that the Taxpayer was assessed based on a purchase price of [REDACTED] and a service contract cost of [REDACTED].

Hearing Testimony

A. Fiscal Support Analyst's Testimony

The Fiscal Support Analyst testified that she is familiar with the associated purchase. She additionally certified the exhibits attached to the Department's Answers to Information Request. She further provided testimony consistent with the rendition of facts within the Department's Answers to Information Request. She also testified that the Taxpayer was assessed based upon a total purchase price of [REDACTED]. No sales tax was remitted towards the purchase. Penalty and interest was assessed because they are required by Arkansas law. The Taxpayer did not provide any evidence of a rescinded sale to the Fiscal Support Analyst.

B. Taxpayer's Testimony

The Taxpayer testified that she was between residences at the time that she purchased the Relevant Vehicle. She could not pay the applicable sales tax though she attempted to save money. She finally gave up and returned the car to the seller since she could not register it. The seller did not return any of the money that she paid towards the purchase.

After a general discussion of the burdens of proof in tax proceedings, a legal analysis shall follow.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Standard of Proof

Ark. Code Ann. § 26-18-313(c) (Repl. 2020) provides, in pertinent part, as follows:

The burden of proof applied to matters of fact and evidence, whether placed on the taxpayer or the state in controversies regarding the application of a state tax law shall be by preponderance of the evidence.

A preponderance of the evidence means the greater weight of the evidence. *Chandler v. Baker*, 16 Ark. App. 253, 700 S.W.2d 378 (1985). In *Edmisten v. Bull Shoals Landing*, 2014 Ark. 89, at 12-13, 432 S.W.3d 25, 33, the Arkansas Supreme Court explained:

A preponderance of the evidence is “not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

The Department bears the burden of proving that the tax law applies to an item or service sought to be taxed, and a taxpayer bears the burden of proving entitlement to a tax exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(d) (Repl. 2020). Statutes imposing a tax or providing a tax exemption, deduction, or credit must be reasonably and strictly construed in limitation of their application, giving the words their plain and ordinary meaning. Ark. Code Ann. § 26-18-313(a), (b), and (e) (Repl. 2020). If a well-founded doubt exists with respect to the application of a statute imposing a tax or providing a tax exemption, deduction, or credit, the doubt must be resolved against the application of the tax, exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(f)(2) (Repl. 2020).

Legal Analysis

Arkansas sales tax generally applies to the entire gross receipts of all sales of tangible personal property and certain specifically enumerated services within the State of Arkansas. Ark. Code Ann. § 26-52-301 (Repl. 2020). Additionally, service contracts and maintenance contracts covering future repairs to motor

vehicles are also taxable. Ark. Code Ann. § 26-52-301(7) (Repl. 2020). A sale is defined as a transfer of title or possession. Ark. Code Ann. § 26-52-103(26)(A) (Repl. 2020). For purchases of motor vehicles, the consumer is responsible for payment of the accompanying sales tax liability to the Department on or before the time of registration. Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020). Additionally, consumers are responsible for payment of sales tax on maintenance or service contracts when those contracts are sold simultaneously with the purchase of a motor vehicle. Arkansas Gross Receipts Tax Rule GR-9(D)(1). A purchased motor vehicle is required to be registered within thirty (30) days of the release of a lien by a prior lienholder or within thirty (30) days after the date of the transfer if no lien is present. Ark. Code Ann. § 27-14-903 (Repl. 2014).

Here, the Department has established that the Taxpayer took ownership and possession of the Relevant Vehicle on January 12, 2018, for a total price of [REDACTED], including the cost of the service contract. Further, the motor vehicle constituted tangible personal property. The governing statutes demonstrate that ownership and taking possession of the car triggers the tax liability. The Department has borne its burden of showing that a sale of tangible personal property to the Taxpayer occurred. Additionally, the exclusion for rescinded sales is not applicable based on the presented evidence.⁵ Consequently, the assessment of sales tax is sustained.

⁵ Part B(7) of the form for a Rescinded Motor Vehicle Sale provides the following two (2) circumstances that justify a refund:

- a. Seller certifies that it has refunded Purchaser all consideration paid for the purchase of the returned vehicle described in Part B2, that it has retaken possession of that vehicle, and that the sale of the vehicle has been rescinded. Any lien, which Seller may have against the returned vehicle, is hereby released.
- b. Seller certifies that it has retaken possession of the vehicle described in Part B2 in exchange for the replacement vehicle described in Part B5, that the sales price stated above is correct

Regarding the late payment penalty, the Department's Representative asserted that the penalty was assessed pursuant to Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2020), which provides as follows:

If the consumer fails to pay the taxes when due:

- (A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and
- (B) The consumer shall pay to the director the penalty under subdivision (a)(4)(A) of this section and the taxes due before the director issues a license for the motor vehicle, trailer, or semitrailer.

Here, based on the above analysis, the Taxpayer failed to timely register the Relevant Vehicle and timely pay the applicable taxes as provided in the relevant code sections. Consequently, the late payment penalty was properly assessed against the Taxpayer.

Interest must be assessed upon tax deficiencies for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). Consequently, the assessment of interest on the tax balance is sustained.

DECISION AND ORDER


The assessment is sustained. The file is to be returned to the appropriate section of the Department for further proceedings in accordance with this Administrative Decision and applicable law. Pursuant to Ark. Code Ann. § 26-18-405 (Repl. 2020), unless the Taxpayer requests in writing within twenty (20) days of the mailing of this decision that the Commissioner of Revenues revise the decision of the Administrative Law Judge, this Administrative Decision shall be effective and become the action of the agency. The revision request may be

and that the sales of the returned vehicle has been rescinded. Any lien, which Seller may have against the returned vehicle, is hereby released.

mailed to the Assistant Commissioner of Revenues, P.O. Box 1272, Rm. 2440, Little Rock, Arkansas 72203. A revision request may also be faxed to the Assistant Commissioner of Revenues at (501) 683-1161 or emailed to revision@dfa.arkansas.gov. The Commissioner of Revenues, within twenty (20) days of the mailing of this Administrative Decision, may revise the decision regardless of whether the Taxpayer has requested a revision.

Ark. Code Ann. § 26-18-406 (Repl. 2020) provides for the judicial appeal of a final decision of an Administrative Law Judge or the Commissioner of Revenues on a final assessment or refund claim denial; however, the constitutionality of that code section is uncertain.⁶

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 1, 2021

⁶ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.